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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/632,992	08/04/2000	Joseph T. Roberts	JBP-512	2211

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EXAMINER

DI NOLA BARON, LILIANA

ART UNIT PAPER NUMBER

1615

DATE MAILED: 08/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/632,992

Applicant(s)

ROBERTS ET AL.

Examiner

Liliana Di Nola-Baron

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1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Receipt of Applicant's request for reconsideration, filed on June 26, 2002, is acknowledged.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over McAtee et al. in view of Venkitaraman et al.

The claimed inventions refer to an alcohol-free antibacterial wipe comprising a flexible fabric containing a latex binder and an aqueous antibacterial solution of a cationic antibacterial agent and a surfactant, and to a method of preparing said wipe.

McAtee et al. provides personal care articles comprising a water insoluble substrate and a cleansing composition comprising a surfactant (See e.g., col. 4, lines 36-65). McAtee et al. teaches that the substrate can be made of nonwoven materials and includes Chicopee® products containing rayon and a latex binder among the nonwoven substrates used in the invention (See e.g., col. 14, line 56 to col. 15, line 46). McAtee et al. lists disodium lauroamphoacetate among useful amphoteric surfactants (See e.g., col. 23, lines 9-29) and includes benzalkonium chloride among the antimicrobial agents used in the invention (See e.g., col. 46, line 25 to col. 47, line 25). McAtee et al. provides methods for manufacturing the article of the invention and teaches

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that the surfactant and any ingredient can be added onto or impregnated into the substrate (See e.g., col. 50, lines 15-64).

Thus, McAtee et al. provides an antibacterial wipe comprising a flexible fabric containing a latex binder and an aqueous antibacterial solution of a cationic antibacterial agent and a surfactant, and a method of preparing said wipe. McAtee et al. is deficient in the fact, that the articles of the invention are not alcohol-free, but include benzyl alcohol in the formulations of the invention.

Venkitaraman et al. discloses sheets impregnated with a stable oil-in-water emulsion composition and having antibacterial properties (See e.g., col. 2, lines 19-48). Venkitaraman et al. teaches that it is preferred that the emulsion composition be alcohol-free to eliminate drying effects and the emulsion, which comprises a surfactant, is impregnated onto one or both sides of an absorbent sheet formed from any woven or nonwoven fiber, including rayon (See e.g., col. 4, line 35 to col. 6, line 17).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the articles disclosed by McAtee et al., by producing articles, which are alcohol-free, to prevent skin dryness and render the article gentler to the skin. Because of the teachings of Venkitaraman et al., that antibacterial wipes containing a surfactant can be alcohol-free, one of ordinary skill in the art would have a reasonable expectation that the wipes and the method for manufacturing said wipes claimed in the instant application would be successful. Therefore the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Response to Arguments

3. Applicant's arguments filed on June 26, 2002 have been fully considered but they are not persuasive.

4. Applicant argues that the prior art does not disclose nor teach the presence of the binder in 90% of the substrate thickness. In response to said argument, it is noted that the prior art (McAtee et al.) teaches that the latex binder can be present in an amount of up to 5% w/w (See e.g., col. 15, line 30). There is nothing in the reference that indicates that the binder is not uniformly distributed throughout the substrate. Thus, the prior art meets the requirement that the "binder is present in at least about 90% of the substrate thickness" as claimed in the instant application.

5. In response to Applicant's argument that there is no suggestion to combine the references, specifically, to combine the dry articles of McAtee et al. with the wet applicators of Venkitaraman et al., the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, McAtee et al. defines the term "substantially dry" as comprising 10% or less of water (See e.g., col. 7, line 63 to col. 8, line 6). Additionally, all the examples provided by McAtee et al. indicate the presence of water. Thus, the articles disclosed by McAtee et al. comprise water. It is also noted that the claims of the instant application read on a wipe without defining the amount of water comprised in said wipe. McAtee et al. provides an

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8. In response to Applicant's argument with respect to claims 3 and 4, that Venkitaraman et al. does not disclose or suggest cationic agents and in particular benzalkonium chloride, it is noted that McAtee et al. includes benzalkonium chloride among the antimicrobial agents used in the invention (See e.g., col. 46, line 25 to col. 47, line 25). One of ordinary skill in the art would determine the optimal concentration of benzalkonium chloride by routine experimentation. The reference of Venkitaraman et al. is relied upon for the knowledge in the art that wipes should be alcohol-free to eliminate drying effects.

9. In response to Applicant's argument with respect to claims 5 and 6, that the prior art does not disclose or suggest a polymer latex polymerized from at least one acrylic monomer, it is noted that McAtee et al. teaches that the substrate can be made of nonwoven materials and includes Chicopee® products containing rayon and a latex binder among the nonwoven substrates used in the invention (See e.g., col. 14, line 56 to col. 15, line 46). The latex binder disclosed by McAtee et al. is ethylene vinyl acetate (EVA), which is polymerized from acrylic monomers. One of ordinary skill in the art would determine the optimal ratio of self-crosslinking acrylic emulsion/acrylic emulsion by routine experimentation.

10. In response to Applicant's argument with respect to claim 8, that the prior art fails to disclose or suggest the claimed range of the antibacterial agent and latex binder, it is noted that the prior art (McAtee et al.) teaches that the latex binder can be present in an amount of up to 5% w/w (See e.g., col. 15, line 30). There is nothing in the reference that indicates that the binder is not uniformly distributed throughout the substrate, including all surfaces. Thus, the prior art meets the requirement that the "binder is present in at least 90% of the substrate thickness" as claimed in the instant application. McAtee et al. includes benzalkonium chloride among the

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antimicrobial agents used in the invention (See e.g., col. 46, line 25 to col. 47, line 25). One of ordinary skill in the art would determine the optimal concentration of benzalkonium chloride by routine experimentation. Thus, McAtee et al. provides an antibacterial wipe comprising a flexible fabric containing a latex binder and an aqueous antibacterial solution of a cationic antibacterial agent and a surfactant. The reference of Venkitaraman et al. is relied upon for the knowledge in the art that wipes should be alcohol-free to eliminate drying effects.

Conclusion

Claims 1-8 are rejected.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Liliana Di Nola-Baron whose telephone number is 703-308-8318. The examiner can normally be reached on Monday through Thursday, 5:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3592 for regular communications and 703-305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1234/ 1235.

August 7, 2002


THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600



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